

1 **UNITED STATES DISTRICT COURT**
2 **FOR THE**
3 **WESTERN DISTRICT OF PENNSYLVANIA**

4 SHAWN MYERS,)

5 Plaintiff)

6 v.)

7) **Case No.: 15-272 Erie**
8 BLUESTEM BRANDS, INC. d/b/a) **COMPLAINT AND DEMAND FOR**
9 FINGERHUT,) **JURY TRIAL**

10 Defendant)
11

12 **COMPLAINT**

13 SHAWN MYERS (“Plaintiff”), by and through his attorneys, KIMMEL &
14 SILVERMAN, P.C., alleges the following against BLUESTEM BRANDS, INC.
15 d/b/a FINGERHUT (“Defendant”):
16

17 **INTRODUCTION**

18 1. Plaintiff’s Complaint is based on the Telephone Consumer Protection
19 Act (“TCPA”).
20

21 **JURISDICTION AND VENUE**

22 2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See
23 Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).
24

25 3. Defendant conducts business in the Commonwealth of Pennsylvania
and as such, personal jurisdiction is established.

1 14. During the relevant period, Defendant called Plaintiff on his cellular
2 telephone, on average, six (6) to seven (7) times a day.

3 15. When contacting Plaintiff on his cellular telephone, Defendant used an
4 automatic telephone dialing system and automatic and/or pre-recorded messages.
5

6 16. Defendant's automated messages identified its company name as the
7 caller.
8

9 17. Defendant's telephone calls were not made for "emergency purposes."

10 18. In July 2015, Plaintiff spoke with Defendant and revoked any consent
11 previously given to Defendant to place telephone calls to his cellular telephone
12 number.
13

14 19. Defendant heard and acknowledged Plaintiff's revocation of consent
15 and demand to stop calling his cellular telephone number.

16 20. Defendant, however, persisted in calling Plaintiff on his cellular
17 telephone every day.
18

19 21. When Plaintiff has answered Defendant's calls and hung up,
20 Defendant immediately called him back.

21 22. In its communications with Plaintiff, Defendant implied that non-
22 payment of a debt was a crime.
23

24 23. Defendant would call Plaintiff 20-35 times a week.

25 24. Most recently, Defendant called Plaintiff on August 7, 2015.

**DEFENDANT VIOLATED THE
TELEPHONE CONSUMER PROTECTION ACT**

25. Plaintiff incorporates the forgoing paragraphs as though the same were set forth at length herein.

26. Defendant initiated multiple automated telephone calls to Plaintiff's cellular telephone using a prerecorded voice.

27. Defendant initiated these automated calls to Plaintiff using an automatic telephone dialing system.

28. Defendant's calls to Plaintiff were not made for emergency purposes.

29. Defendant's calls to Plaintiff, after July 2015, were not made with Plaintiff's prior express consent.

30. Defendant's acts as described above were done with malicious, intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the purpose of harassing Plaintiff.

31. The acts and/or omissions of Defendant were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.

32. As a result of the above violations of the TCPA, Plaintiff has suffered the losses and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, SHAWN MYERS, respectfully prays for a judgment as follows:

- a. All actual damages suffered pursuant to 47 U.S.C. §227(b)(3)(A);
- b. Statutory damages of \$500.00 per violative telephone call pursuant to 47 U.S.C. §227(b)(3)(B);
- c. Treble damages of \$1,500 per violative telephone call pursuant to 47 U.S.C. §227(b)(3);
- d. Injunctive relief pursuant to 47 U.S.C. §227(b)(3);
- e. Any other relief deemed appropriate by this Honorable Court.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, SHAWN MYERS, demands a jury trial in this case.

1 RESPECTFULLY SUBMITTED,

2 DATED: 11-09-15

KIMMEL & SILVERMAN, P.C.

3
4 By: /s/ Craig Thor Kimmel

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